

Source Aggregation

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To be, or not to be (a single source)...

- ▶ Proper aggregation determinations
 - ensure that PSD/NSR/Title V requirements are not circumvented
 - ensure proper use of “netting” credits

Source Aggregation:

40 CFR 52.21(b)

- ▶ *Stationary source* means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.
- ▶ *Building, structure, facility, or installation* means all of the pollutant-emitting activities which
 - belong to the same industrial grouping,
 - are located on one or more contiguous or adjacent properties, and
 - are under the control of the same person (or persons under common control).

Three Factor Test

Factor 1: Industrial Grouping

- ▶ Same SIC code (System of Industrial Classification)
 - Facilities must share first two digits of SIC code
 - If they do not share SIC codes, consider whether a support relationship exists.
 - If one facility's primary purpose is to support the function of another, then they meet this requirement

Three Factor Test

Factor 1: Industrial Grouping

Example: AK Steel/Harsco

- Electric arc steel furnace and a steel slag handling facility co-located;
- Different corporate owners and different SIC codes
- The slag handling facility's major operational purpose is to take slag from the AK Steel, without which it has little other business...

Three Factor Test

Factor 2: Contiguous and Adjacent

- ▶ “Adjacent or Contiguous” derives from the common sense notion of a “plant” – Alabama Power case of 1979.
- ▶ In the Preamble to the 1980 rules, we stated that “EPA is unable to say precisely at this point how far apart activities must be in order to be treated separately. The Agency can answer that question only through case-by-case determinations”. (45 FR 52695).
 - Properties do not have to be physically adjoining
 - The determination can rely upon physical connections between sites such as pipelines or rail lines, and the inter-related nature of sites.
- ▶ Support relationship is NOT considered for this prong

Three Factor Test

Factor 2: Contiguous and Adjacent

- ▶ Was the location of the new facility chosen primarily because of its proximity to the existing facility, to enable the operation of the two facilities to be integrated?
- ▶ Will materials be routinely transferred between the facilities?
- ▶ Will the production process itself be split in any way between the facilities?

Three Factor Test

Factor 3: Common Control

- ▶ Common ownership constitutes common control.
- ▶ Presume that one company locating on another's land establishes a "control" relationship. It is up to the facility to disprove that presumption.

Three Factor Test

Factor 3: Common Control

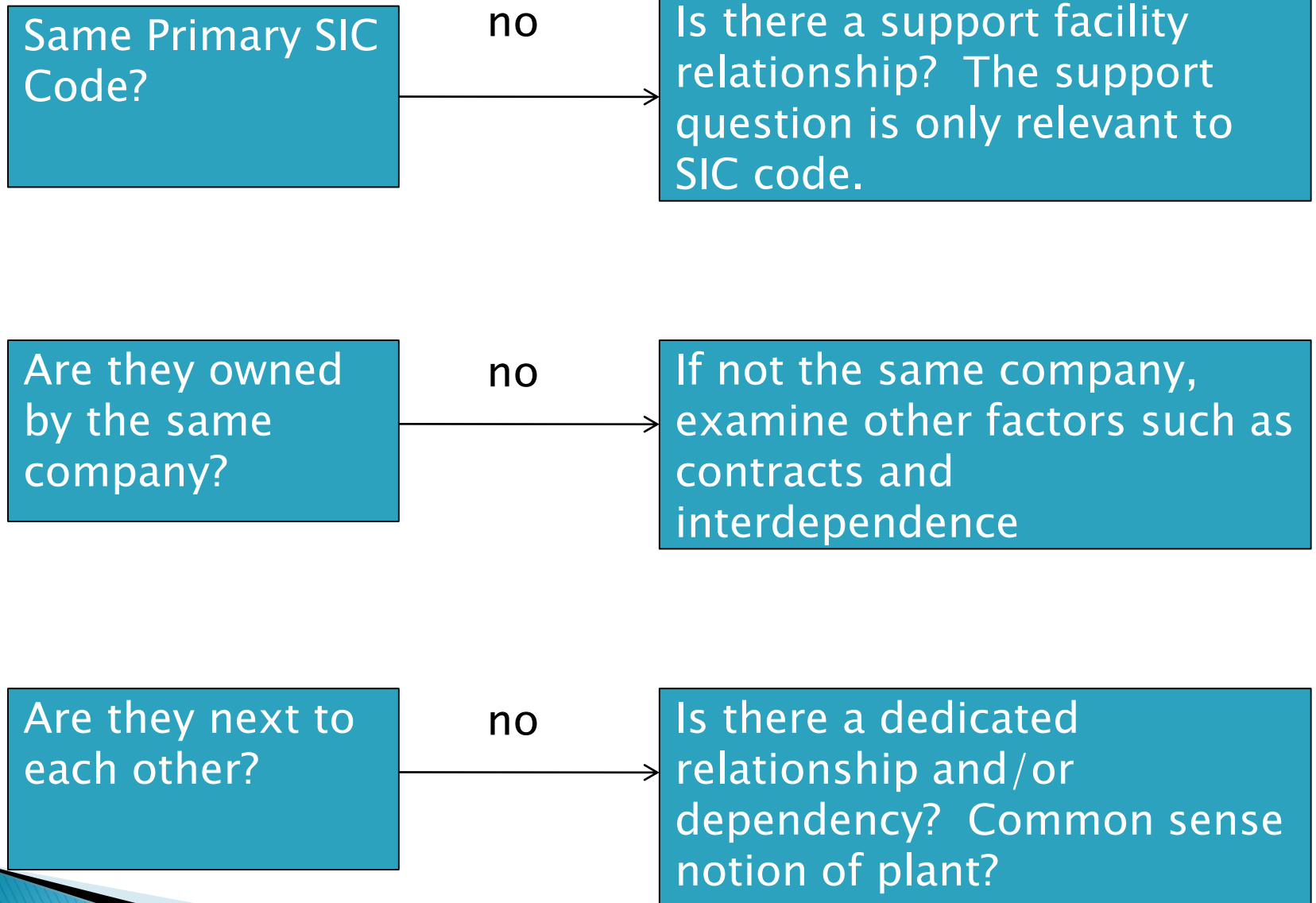
- ▶ Common control can be established
 - through ownership of multiple sources by the same parent corporation or by a parent and a subsidiary of the parent corporation, or
 - if an entity such as a corporation has the power to direct the management and policies of a second entity, thus controlling its operations, through a contractual agreement or a voting interest.
- ▶ If common control is not established by the first two mechanisms, then one should consider whether there is a contract for service relationship between the two companies or if a support/dependency relationship exists between the two companies.

Three Factor Test

Factor 3: Common Control

- ▶ Do the facilities share
 - common workforces, plant managers, security forces, corporate executive officers, or board of executives?
 - equipment, other property, or pollution control equipment?
 - common payroll activities, employee benefits, health plans, retirement funds, insurance coverage, or other administrative functions?

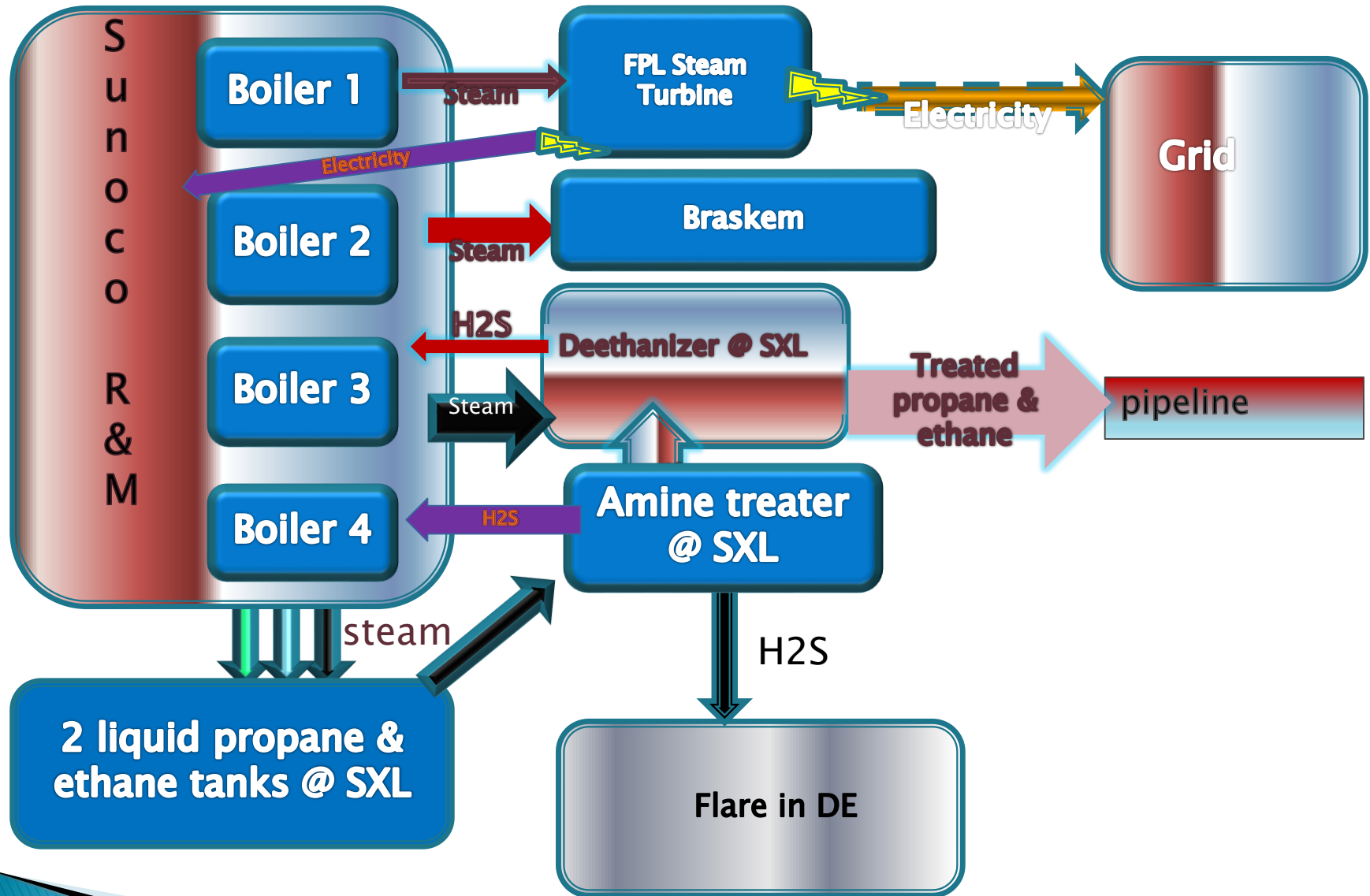
Summary



Aggregation

- ▶ All three factors must be met for source aggregation.
- ▶ Source and Project Aggregation decisions are still always CASE BY CASE.
- ▶ Please see EPA Region 7 Policy and Guidance database for documents and prior decisions
<http://www.epa.gov/region07/air/search.htm>

Refinery in PA and DE



Recent Updates

Summit Petroleum

- ▶ Natural gas sweetening operations in Michigan
- ▶ US District Court, 6th Circuit (Kentucky, Michigan, Ohio, Tennessee)
 - August 7, 2012 ruling stands
 - EPA requested panel rehearing of decision. This was denied.
 - “We remand this case to the EPA for a reassessment of Summit’s Title V source determination request in light of the proper, plain-meaning application of the requirement that Summit’s activities be aggregated only if they are located on physically contiguous or adjacent properties.”

Recent Updates...Continued

- ▶ On May 30, 2014, D.C. Circuit made an adverse CAA decision
 - National Environmental Development Assoc.'s Clean Air Project (NEDACAP v. EPA)
 - At issue: EPA's memo after *Summit* that allowed EPA to continue aggregation policy in jurisdictions other than Sixth Circuit.
 - NEDACAP cited EPA regs (40 CFR §56, *Regional Consistency*) promulgated under CAA § 301(a)(2), that promote uniform national regulatory policies; this quirk is in the CAA but not other laws such as CWA. Court found that EPA bound itself to *Summit* decision due to this.

Discussion

- ▶ Open Q&As about West Virginia's experience, especially with oil and gas facilities.
- ▶ Compressor stations: 1980 preamble states that EPA did not intend the term "source" to include activities located many miles apart along interstate pipelines, but no bright-line test.
- ▶ Booster stations, gas plants: it's complicated!